

Federal Communications Commission

FCC 97D-07

FCC MAIL SECTION

APR 8 10 07 AM '97
 Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of) MM DOCKET NO. 96-201
)
 GROUP COMMUNICATIONS, INC.)
)
 Order to Show Cause Why the)
 License for Station KRGQ(AM) ¹)
 West Valley City, Utah Should)
 Not be Revoked)

Appearances

Harry C. Martin and Andrew S. Kersting, on behalf of Group Communications, Inc.; and Robert A. Zauner, on behalf of the Mass Media Bureau.

SUMMARY DECISION
 OF
 ADMINISTRATIVE LAW JUDGE JOSEPH CHACHKIN

Issued: April 3, 1997

Released: April 7, 1997

Preliminary Statement

1. The Order To Show Cause And Hearing Designation Order (OSC) (DA-96-1612) adopted September 17, 1996 by the Assistant Chief, Audio Services Division, Mass Media Bureau (Bureau) specified the following issues against Group Communications, Inc. (Group):

- (1) To determine whether Group Communications, Inc. has the capability and intent to expeditiously resume the broadcast operations of KRGQ(AM), consistent with the Commission's Rules.
- (2) To determine whether Group Communications, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

¹ By letter dated March 4, 1997, the call sign for the station was changed from KRGQ to KRGO, effective March 10, 1997. For administrative convenience, we will refer to the station as KRGQ.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Group Communications, Inc. is qualified to be and remain the licensee of KRGQ(AM).

2. On March 3, 1997, Group filed a motion for summary decision seeking favorable resolution of the designated issues. On March 17, 1997, the Bureau filed Comments in support of the motion for summary decision.

FINDINGS OF FACT

3. Group is the licensee of KRGQ(AM), West Valley City, Utah. On January 31, 1995, Group suspended broadcast operations upon eviction from its transmitter site. On February 8, 1995, Group requested special temporary authority (STA) to remain silent. In its request, Group stated that it was in the process of establishing operations at a new transmitter location on a temporary basis and that it would submit a Form 301 application and an STA request as soon as its plans were finalized. On February 13, 1995, the Commission granted Group permission to remain silent through May 13, 1995.

4. On May 12, 1995, Group requested additional time to remain silent, which was granted on May 19, 1995. On August 16, 1995, Group again requested continued authority to remain off the air. This time Group advised that its search for a new site had reached the stage where it was negotiating with a landowner. Group also stated that it was considering a change in its community of license, which would necessitate a site change to an identified site. The Commission granted Group's request and extended its STA to February 24, 1996. The Commission also informed Group that: "Any further requests for extension of this authority must be accompanied by a detailed summary of steps taken to return the station to on-air operations."²

5. On February 20, 1996, Group requested a further extension of its silence authority for an additional six-month period. The licensee stated that it had made arrangements for a new transmitter site in its present community of license, and had applied for a building permit the previous month. The FCC never acted upon this extension request.

² In its October 9, 1996, letter transmitting its minor modification, Group attached the August 24, 1995, Commission STA grant as well as Group's February 20, 1996, request for continued authority to remain silent.

6. On October 10, 1996, Group filed a minor change application for Station KRGQ to move to its new transmitter site (File No. BP-961010AB). Following the dismissal of its application on November 27, 1996, for certain technical deficiencies, Group amended its application on December 4, 1996, and it was ultimately granted on December 10, 1996. Station KRGQ resumed normal broadcast operations on February 1, 1997, and Group filed its license application for the station on February 13, 1997 (File No. BL-970213AC).

CONCLUSIONS

7. Summary decision is appropriate where there is no "genuine issue as to any material fact" for resolution at the hearing. Webster-Fuller Communications Associates, 3 FCC Rcd 6967, 6968 (Rev. Bd. 1988), recon. denied, 4 FCC Rcd 1438 (Rev. Bd. 1989). See also 47 CFR §1.251(d). As demonstrated below, a hearing no longer is warranted in this proceeding because there is no material issue of fact left to be resolved at such a hearing.

8. Issue (1) seeks to determine whether Group has the capability and intent to expeditiously resume the broadcast operations of the station consistent with the Commission's Rules. Given that Group relocated to a new transmitter site, constructed new facilities and resumed broadcasting, it is concluded that Group has the capability and intent to resume broadcasting. Issue (1) is resolved in Group's favor.

9. Issue (2) seeks to determine whether Group has violated Section 73.1740 and/or Section 73.1750 of the Commission's Rules. Pursuant to Section 73.1750, Group was required to notify the Commission of permanent discontinuance of Station operation and forwarded the station's license to the Commission for cancellation only if Group intended to permanently discontinue operation of KRGQ. Group's relocation of its transmitter and its return to the air demonstrates that Group never intended to discontinue operation of KRGQ. Therefore, Group did not violate Section 73.1750 of the Rules.

10. Section 73.1740 of the Commission's Rules prescribes minimum operating schedules for commercial broadcast licensees. Among other things, the rule requires that, if a licensee is going to keep its station off the air for more than 30 days, it must obtain authorization from the Commission to do so. Section 73.1740(a)(4). Commission authority to operate less than the minimum required by Section 73.1740 is conferred by a grant of special temporary authority pursuant to Section 73.1635 of the Commission's Rules.

11. Group's authority to remain silent expired on February 24, 1996. Although Group filed a request for extension of its silence authority on February 20, 1996, the Commission did not act on the request. Thus, when this case was designated for hearing on September 17, 1996, the station had remained silent for approximately seven months without authority, in violation of Section 73.1740. Considering all the circumstances including the fact that the rule violation was of short duration and Group's timely filing of its request to remain silent, the evidence does not reflect a "deliberate flouting of the Commission's rules" sufficient to warrant revocation of

the KRGQ license. Cavan Communications, 10 FCC Rcd. 2873; Hometown Media, Inc., 11 FCC Rcd. 14344 (1996). Therefore, it is concluded that Group is qualified to be and remain a licensee.

Accordingly, IT IS ORDERED, that the Motion for Summary Decision IS GRANTED; the issues designated against Group Communications, Inc. in the Order To Show Cause And Hearing Designation Order IS RESOLVED in favor of Group Communications, Inc.; and this proceeding IS TERMINATED.³

FEDERAL COMMUNICATIONS COMMISSION

Joseph Chachkin
Administrative Law Judge

³ In the event that exceptions are not filed within 30 days after the release of this Summary Decision, and the Commission does not review the case on its own motion, this Summary Decision will become effective 50 days after its public release pursuant to Section 1.276(d) of the Commission's Rules [47 CFR §1.276(d)].